IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 00-2173

MARCELLA RICHMAN, Individually and
as Special Administrator of the Estate
of Jack B. Richman, deceased,

Plaintiff-Appellee,

v.

MICHAEL SHEAHAN, in his Official Capacity
as Sheriff of Cook County, et al.,

Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 98 C 7350—**Joan B. Gottschall**, *Judge.*

ARGUED DECEMBER 6, 2000—DECIDED OCTOBER 16, 2001

Before BAUER, POSNER, and WILLIAMS, *Circuit Judges.*

WILLIAMS, *Circuit Judge.* Jack Richman died shortly after fourteen sheriff's deputies restrained him during his mother's appearance before an Illinois judge on a traffic violation. Marcella Richman, on her own behalf and on behalf of her son's estate, brought federal and state claims against the sheriff's deputies in their individual capacities and against Cook County Sheriff Michael Sheahan in his official capacity. The defendants filed a motion to dismiss based in part on absolute, Eleventh Amendment, and state sovereign immunity. We agree with the district court that

the deputies are not entitled to absolute immunity, and therefore affirm the court's denial of their motion to dismiss the § 1983 claims. Because we cannot conclude as a matter of law that the sheriff's alleged unconstitutional policy regarding training and supervision of deputies represents state policy for purposes of Eleventh Amendment immunity, we affirm the district court's denial of the sheriff's motion to dismiss. However, we conclude that the deputies' conduct would be attributed to the state for purposes of Illinois sovereign immunity, and therefore reverse the district court's denial of the deputies' motion to dismiss the state law claims.

I. BACKGROUND

Marcella Richman appeared in the Circuit Court of Cook County, Illinois, to challenge a traffic citation.[1] She was accompanied by her son, Jack Richman, who planned to testify as a witness. The Richmans waited in the courtroom for several hours before their case was called, and then the judge continued the hearing to a future date. The Richmans attempted to ask a question but the judge quieted them, and when Jack continued to speak, the judge ordered him restrained. Two Cook County sheriff's deputies began to take him into custody and twelve more deputies then entered the courtroom. According to the complaint, the fourteen deputies attacked Jack, forced him to the floor, sat on and handcuffed him. Jack, who was physically disabled and required the use of a cane, did not resist the deputies' attempt to restrain him, nor did his mother, who was restrained by four other deputies. While Jack was hand-

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[1] This version of events is from the allegations of Richman's amended complaint, which we accept as true for purposes of reviewing the defendants' motion to dismiss. *See Hammond v. Kunard*, 148 F.3d 692, 695 (7th Cir. 1998).

cuffed and on the floor, he emptied his bladder and bowels, and he appeared to have stopped breathing. Paramedics rendered emergency assistance at the scene and then transported him to a hospital, where he was pronounced dead.

Marcella Richman's amended complaint seeks damages against the deputies in their individual capacities pursuant to 42 U.S.C. § 1983, alleging that the deputies' conduct violated her and her son's right to be free from unreasonable searches and seizures under the Fourth and Fourteenth Amendments. The complaint also includes § 1983 claims against Cook County Sheriff Michael Sheahan in his official capacity, alleging that he failed adequately to train and supervise the deputies in their duties "to refrain from using excessive force in effecting seizures of citizens." The complaint also includes claims against the deputies under the Illinois Wrongful Death Act, 740 Ill. Comp. Stat. 180/1, and the Survival Act, 755 Ill. Comp. Stat. 5/27-6.[2]

II. ANALYSIS

On appeal, we must decide whether the district court erred in denying the defendants' motion to dismiss based on (1) the deputies' claim to absolute immunity; (2) the sheriff's claimed right, under the Eleventh Amendment, to be free from suit in federal court; and (3) the deputies' claim to sovereign immunity under the Illinois State Lawsuit Immunity Act, 745 Ill. Comp. Stat. 5/1, and Court of Claims Act, 705 Ill. Comp. Stat. 505/8. We review each of these questions of law de novo. *DeGenova v. Sheriff of DuPage County*, 209 F.3d 973, 975 (7th Cir. 2000); *Hammond v. Kunard*, 148 F.3d 692, 695 (7th Cir. 1998); *cf. Benning v. Bd. of Regents*, 928 F.2d 775, 778-80 (7th Cir. 1991).

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[2] Other defendants and claims were dismissed below and are not involved in this appeal.

A. Absolute Immunity—§ 1983 Claims Against the Deputies

The parties are correct that we have jurisdiction, under the collateral order doctrine, to review the district court's decision to deny the defendants' motion to dismiss based on absolute immunity. *See Mitchell v. Forsyth*, 472 U.S. 511, 530 (1995); *Hammond*, 148 F.3d at 695.

The ordinary rule is that qualified—and not absolute—immunity is sufficient to protect law enforcement officers in the conduct of their official duties. *Malley v. Briggs*, 475 U.S. 335, 340-41 (1986); *Pierson v. Ray*, 386 U.S. 547, 557 (1967). The deputies argue that the ordinary rule does not apply in this case because they were required to execute the judge's order, and that quasi-judicial immunity, a form of absolute immunity derived from judicial immunity, is appropriate for officers providing courtroom security. We disagree.

We begin our analysis with the fundamental principle that judges are entitled to absolute immunity from damages for their judicial conduct. *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991); *Forrester v. White*, 484 U.S. 219, 225-29 (1988). Judicial immunity was recognized at common law "as a device for discouraging collateral attacks and thereby helping to establish appellate procedures as the standard system for correcting judicial error" and to "protect[ ] judicial independence by insulating judges from vexatious actions prosecuted by disgruntled litigants." *Forrester*, 484 U.S. at 225; *see also Pierson*, 386 U.S. at 554; *Bradley v. Fisher*, 80 U.S. 335, 347 (1872).

The absolute immunity afforded to judges has been extended to apply to "quasi-judicial conduct" of "[n]on-judicial officials whose official duties have an integral relationship with the judicial process." *Henry v. Farmer City State Bank*, 808 F.2d 1228, 1238 (7th Cir. 1986). For example, we have applied absolute immunity to officials engaged in quasi-

judicial decision making, such as members of a parole board. *See Wilson v. Kelkhoff*, 86 F.3d 1438, 1443-44 (7th Cir. 1996); *Walrath v. United States*, 35 F.3d 277, 281-82 (7th Cir. 1994). For these officers, whose conduct is "functionally comparable" to those of judges, *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 436 (1993); *Wilson*, 86 F.3d at 1443, the rationale for applying absolute immunity is much the same as for judges: that officials making quasi-judicial decisions should be free of "'the harassment and intimidation associated with litigation.'" *See Kincaid v. Vail*, 969 F.2d 594, 600-01 (7th Cir. 1992) (quoting *Burns v. Reed*, 500 U.S. 478, 494 (1991)). The deputies do not claim that they exercise a comparable form of discretionary decision making.[3]

The deputies instead rely on a different sort of quasi-judicial immunity, which we have recognized for some officials whose functions are further removed from the core dispute resolution function of judges. "[W]hen functions that are more administrative in character have been undertaken pursuant to the explicit direction of a judicial officer, we have held that that officer's immunity is also available to the subordinate." *Kincaid*, 969 F.2d at 601. The policy justifying an extension of absolute immunity in these circumstances is to prevent court personnel and other officials from becoming a "'lightning rod for harassing litigation' aimed at the court." *See Ashbrook v. Hoffman*, 617 F.2d 474, 476 (7th Cir. 1980) (quoting *Kermit Constr. Corp. v. Banco Credito Y Ahorro Ponceno*, 547 F.2d 1, 3 (1st Cir. 1976)); *see*

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[3] The deputies characterize their conduct as "classically ministerial," that is, without the exercise of their own discretion. *See* Black's Law Dictionary 1011 (7th ed. 1999). At common law, such conduct by a sheriff was not entitled to absolute immunity. *See* Thomas M. Cooley, Law of Torts, 376, 392-98 (Chicago, Callaghan 1880); *see also* Floyd R. Mechem, Public Offices and Officers, §§ 636-38 (Chicago, Callaghan 1890).

also Kincaid, 969 F.2d at 601; *Mays v. Sudderth*, 97 F.3d 107, 113 (5th Cir. 1996); *Coverdell v. Dept. of Social & Heath Servs.*, 834 F.2d 758, 765 (9th Cir. 1987).

We have not yet had occasion to consider whether law enforcement officers charged with using unreasonable force when seizing a person pursuant to a judge's order are entitled to quasi-judicial immunity. Two other circuit courts of appeal have addressed this question, with different results. In *Martin v. Board of County Commissioners*, 909 F.2d 402, 405 (10th Cir. 1990), the Tenth Circuit held that officers charged with employing excessive force to execute a bench warrant were not entitled to absolute immunity. The Tenth Circuit reasoned that, because an order to take someone into custody carries with it an implicit order not to use unreasonable force, the judge's order would not shield the officers from a claim challenging the manner in which they enforced the order. *Id.* The court distinguished its earlier holding in *Valdez v. City of Denver*, 878 F.2d 1285 (10th Cir. 1989), that law enforcement officers enforcing a contempt order were entitled to quasi-judicial immunity for claims of false arrest and imprisonment. In *Valdez*, the claim was not directed at the manner in which the judge's order was executed, but instead at conduct expressly prescribed by the order. Because of this difference, the court held that the policies underlying the extension of absolute immunity—not holding officials accountable for conduct they are powerless to avoid—did not apply. *Martin*, 909 F.2d at 404-05.

The Eighth Circuit reached the opposite conclusion in *Martin v. Hendren*, 127 F.3d 720 (8th Cir. 1997), a case, like this one, in which the plaintiff was restrained in the courtroom by order of the judge. The Eighth Circuit rejected the Tenth Circuit's reasoning, and held that the alleged impropriety of the officers' acts (using excessive force to effectuate the seizure) did not strip the acts of their quasi-judicial character. *Id.* at 721-22. The Eighth Circuit relied on the Supreme Court's statement in *Mireles* that "'[i]f

judicial immunity means anything, it means that a judge will not be deprived of immunity because the action he took was in error . . . or was in excess of his authority.'" 127 F.3d at 722 (quoting *Mireles*, 502 U.S. at 12-13).

We believe that the Eighth Circuit stretches the reasoning in *Mireles* too far, and confuses the question suggested by the Tenth Circuit in *Martin*—whether the challenged conduct was specifically ordered by the judge—with the separate question of whether the conduct was lawful or exceeded the actor's authority. In *Mireles*, the plaintiff challenged the judge's order directly—that is, by suing the judge. *Mireles* holds that when the challenged conduct is the judge's own decision making, the applicability of absolute immunity cannot turn on the correctness of the judge's decision. 502 U.S. at 12-13. By contrast, when the conduct directly challenged is not the judge's decision making, but the manner in which that decision is enforced, we agree with the Tenth Circuit that the law enforcement officer's fidelity to the specific orders of the judge marks the boundary for labeling the act "quasi-judicial." *See Martin*, 909 F.2d at 404-05.

More important, as Judge Lay points out in his dissent in *Hendren*, *Mireles* "directs that the facts of the incident must be evaluated in relation to the general function of the officer." *Hendren*, 127 F.3d at 723 (Lay, J., dissenting). In making this evaluation, "we examine the nature of the functions with which a particular official or class of officials has been lawfully entrusted, and we seek to evaluate the effect that exposure to particular forms of liability would likely have on the appropriate exercise of those functions." *Forrester*, 484 U.S. at 224.

Our quasi-judicial immunity cases demonstrate that the primary function to be protected is judicial or quasi-judicial decision making. This is true of cases challenging discretionary conduct by a quasi-judicial body like a parole board,

see Wilson, 86 F.3d at 1443-44, and it is also true when the lawsuit is aimed at persons integral to the judicial process but whose conduct is not "functionally comparable" to a judge's. *See Antoine*, 508 U.S. at 436; *Wilson*, 86 F.3d at 1443. For example, we have recognized absolute immunity for law enforcement officials when the challenged conduct (the mere act of enforcing a foreclosure judgment) was specifically ordered by the judge. *See Henry*, 808 F.2d at 1238-39. The source of the plaintiff's wrong in *Henry* was the judge's order itself, and we reasoned that a suit against the officers was not the appropriate vehicle for challenging the validity of that order. *See id.* Under those circumstances, extension of absolute immunity is not primarily to protect the enforcement function performed by the deputies, but rather to protect the judicial decision-making function by discouraging collateral attacks and encouraging appeals. *See id.* at 1239. It further avoids the "untenable result" of requiring "sheriffs and other court officers who enforce properly entered judgments pursuant to facially valid court orders to act as appellate courts, reviewing the validity of both the enforcement orders and the underlying judgments before proceeding to collect on them." *Id.*; *see also Mays*, 97 F.3d at 113; *Valdez*, 878 F.2d at 1289.

Similarly, for court personnel and adjuncts who do not exercise a discretionary function comparable to a judge's, the justification for extending absolute immunity is most compelling when the lawsuit challenges conduct specifically directed by the judge, and not simply the manner in which the judge's directive was carried out. *See Kincaid*, 969 F.2d at 601 (clerk who refused to accept filing of complaint at the direction of the judge was entitled to quasi-judicial immunity); *Dellenbach v. Letsinger*, 889 F.2d 755, 763 (7th Cir. 1989) (court reporter and clerks who told plaintiff to pay for unnecessary transcript at the request of the judge were entitled to quasi-judicial immunity); *Eades v. Sterlinske*, 810 F.2d 723, 726 (7th Cir. 1987) (clerk and court reporter

who prepared and filed a false certificate summarizing an instruction conference at the direction of the judge were entitled to quasi-judicial immunity); *cf. Lowe v. Letsigner*, 772 F.2d 308, 313 (7th Cir. 1985) (court clerk who allegedly concealed entry of order was not entitled to absolute immunity for his ministerial act of failing to type and send notice after entry of judgment).[4] By contrast, the Supreme Court has held that a court reporter was not entitled to absolute immunity for her own misconduct (losing her trial notes and failing to provide a transcript of the trial), reasoning that "court reporters do not exercise the kind of judgment that is protected by the doctrine of judicial immunity." *See Antoine*, 508 U.S. at 437.

The policies articulated in our quasi-judicial immunity cases have less force when, as in this case, the challenged conduct is the manner in which the judge's order is car-

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[4] The quasi-judicial immunity cases from other circuits cited by the deputies similarly involved challenges to conduct prescribed by the court's order or direction. *See Gallas v. Supreme Court of Pennsylvania*, 211 F.3d 760, 772-73 (3d Cir. 2000) (court administrator entitled to immunity for damages for release of information ordered by a judge); *Mays*, 97 F.3d at 108, 114 (official entitled to quasi-judicial immunity for "strict compliance" with facially valid order, but not for conduct that exceeded the scope of the order); *Roland v. Phillips*, 19 F.3d 552, 556-57 (11th Cir. 1994) (sheriffs entitled to quasi-judicial immunity for executing a facially valid court order); *Coverdell*, 834 F.2d at 764-65 (child protective services worker entitled to quasi-judicial immunity for executing order to apprehend a child); *Bush v. Rauch*, 38 F.3d 842, 847 (6th Cir. 1994) (court official entitled to quasi-judicial immunity for carrying out the order of the judge); *Robinson v. Freeze*, 15 F.3d 107, 109 (8th Cir. 1994) (holding that officers would be entitled to absolute immunity only for conduct "specifically ordered by the trial judge and related to the judicial function"); *Valdez*, 878 F.2d at 1289-90 (officers entitled to quasi-judicial immunity for enforcing contempt order).

ried out, and not conduct specifically directed by a judge. Reading Richman's complaint in the light most favorable to her, the claim is not that the judge ordered the deputies to use unreasonable force, but that the deputies exceeded the judge's order by the manner in which they executed it. The claim for damages in this case is not therefore a collateral attack on the judge's order (an order that Richman concedes was valid), and an appeal of the judge's order would provide no remedy. Similarly, the deputies are not being called upon to answer for wrongdoing directed by the judge, but instead for their own conduct. And that conduct—the manner in which they enforced the judge's order—implicates an executive, not judicial, function.

Moreover, we believe that the policies articulated by the Eighth Circuit in *Hendren* are insufficient to justify the extension of absolute immunity urged here. The Eighth Circuit expressed alarm at the possibility that exposing court security officers to "potential liability for acting on a judge's courtroom orders could breed a dangerous, even fatal, hesitation." *See Hendren*, 127 F.3d at 722. But without in any way minimizing the vital and often valorous service of those who provide security to judges and other participants in the judicial process, we note that the need for immediate action in the face of potentially fatal consequences is not a situation unique to courtrooms, and yet qualified immunity (which takes into account the particular circumstances faced by the officers) is the rule for law enforcement officers of all kinds, *see Malley*, 475 U.S. at 340-41; *Pierson*, 386 U.S. at 557, including secret service officers charged with guarding the President. *See Hunter v. Bryant*, 502 U.S. 224, 228 (1991) (per curiam). That the conduct occurs in the courtroom, does not, in our opinion, justify our applying a different rule. In this regard, the Supreme Court has cautioned against our being overly solicitous of claims of immunity involving the judicial function:

> One can reasonably wonder whether judges, who have been primarily responsible for developing the law of official immunities, are not inevitably more sensitive to the ill effects that vexatious lawsuits can have on the judicial function than they are to similar dangers in other contexts. . . . Although Congress has not undertaken to cut back the judicial immunities recognized by this Court, we should be at least as cautious in extending those immunities as we have been when dealing with officials whose peculiar problems we know less well than our own.

Forrester, 484 U.S. at 226 (citation omitted).

Finally, the only difference (in terms of liability for damages) between the absolute immunity urged by the deputies here and the qualified immunity that is the ordinary rule for law enforcement officers is that the former shields even knowingly unlawful or plainly incompetent acts. *See Malley*, 475 U.S. at 341. Absolute immunity provides an additional benefit even for officers whose actions are reasonable because it allows them to avoid altogether the litigation that would be required in order to determine their entitlement to qualified immunity. The tradeoff, however, is that even victims of knowingly unlawful acts go without a remedy, and for that reason absolute immunity is applied with caution and only when it is necessary to protect the function at issue. *See Forrester*, 484 U.S. at 230; *Antoine*, 508 U.S. at 432 n.4; *Burns v. Reed*, 500 U.S. 478, 486-87 (1991). A secure courtroom is necessary to protect the judicial function from interference or intimidation; this function is adequately protected by immunizing a judge's order to restrain a person, *see Mireles*, 502 U.S. at 12-13, and by barring lawsuits that challenge a judge's decision through claims aimed at officers who do nothing more than implement it. *See Henry*, 808 F.2d at 1238-39. It is not necessary to the judicial function, in our judgment, to also deny a remedy

to plaintiffs who were harmed not by the judge's order, but by unlawful conduct by those who enforce it. We therefore affirm the district court's denial of the deputies' motion to dismiss the plaintiff's § 1983 claims.[5]

B. The Eleventh Amendment—§ 1983 Claims Against the Sheriff

Sheriff Sheahan claims that the district court erred in denying his motion to dismiss, in which he asserted that the Eleventh Amendment barred the plaintiff's § 1983 claim alleging that he failed adequately to train and supervise the deputies. We have jurisdiction, under the collateral order doctrine, to review the district court's denial of the sheriff's claim to Eleventh Amendment immunity. *See Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146-47 (1993); *DeGenova*, 209 F.3d at 975; *Franklin v. Zaruba*, 150 F.3d 682, 684 (7th Cir. 1998). Because we cannot conclude as a matter of law that the alleged unconstitutional policy of the sheriff's office represents state policy, we affirm the district court's denial of the sheriff's motion to dismiss.

Richman sued Sheahan in his official capacity, and therefore the claim is against the entity of which he is an agent. *See Kentucky v. Graham*, 473 U.S. 159, 169 (1985); *Scott v. O'Grady*, 975 F.2d 366, 369 (7th Cir. 1992). The Eleventh Amendment does not apply to suits against counties or other local government entities. *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977); *Scott*, 975 F.2d at 370. Under Illinois law, sheriffs are classified as

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[5] This opinion has been circulated to the full court before release in accordance with Circuit Rule 40(e). A majority did not favor a rehearing en banc on the question of the deputies' entitlement to quasi-judicial immunity. Judge Bauer voted to grant rehearing en banc.

county, not state, officials, and when the sheriff "performs his duties as the principal executive officer or chief law enforcement officer of the county, he acts as a county official" and the Eleventh Amendment does not apply. *Scott*, 975 F.2d at 371; *Franklin*, 150 F.3d at 684; *Ruehman v. Sheahan*, 34 F.3d 525, 528 (7th Cir. 1994). However, a county sheriff may act as an arm of the state when performing certain functions. *Ruehman*, 34 F.3d at 528; *Scott*, 975 F.2d at 371. When he does so, a suit challenging that conduct is against the state, and the claim for damages may not be brought in federal court. *Ruehman*, 34 F.3d at 528; *Scott*, 975 F.2d at 371.

In determining whether the sheriff is an agent of Illinois government when performing particular functions, we have looked to the degree of control exercised by Illinois over the conduct at issue and whether the Eleventh Amendment policy of avoiding interference with state (as opposed to county) policy is offended by the lawsuit. *See Ruehman*, 34 F.3d at 529; *Scott*, 975 F.2d at 371. In *Scott*, for example, deputy sheriffs were sued in their official capacities for executing a writ of assistance issued by an Illinois court. We noted that because the sheriff had "a statutory, nondiscretionary duty to execute this writ," the deputies were acting as state, not county, officers. *Scott*, 975 F.2d at 371.

But not all actions associated with carrying out the deputies' duty to execute the state court's orders are actions on behalf of the state. For example, in *Ruehman*, the plaintiff challenged the sheriff's design of a system to track warrants issued by state courts. We noted, consistent with *Scott*, that an official-capacity suit challenging the deputies' execution of the warrants would be a suit against the state because the warrants were issued by the Illinois courts. 34 F.3d at 528-29. However, the warrant-tracking system that was at the heart of the plaintiff's complaint was designed and implemented by the sheriff and county government, and did not therefore implicate state policy: "State law re-

quires the Sheriff to arrest the right people but says nothing about how he should do it." *Id.* at 529.

As in *Ruehman*, the claim against the sheriff in this case does not challenge the mere execution of the court's order by the sheriff's office. Nor does it seek to hold the sheriff liable as the deputies' employer, a theory that is foreclosed by *Monell v. New York City Dept. of Soc. Servs.*, 436 U.S. 658, 692 (1978). Instead, Richman's claim against the sheriff's office is based on its alleged unconstitutional policy (its failure adequately to train and supervise the deputies in deliberate indifference to the plaintiff's rights) regarding the use of force when arresting persons in the courtroom pursuant to a judge's order. Therefore, we must determine whether that alleged policy represents state policy or instead county policy. *See McMillian v. Monroe County, Alabama*, 520 U.S. 781, 784 (1997); *DeGenova*, 209 F.3d at 975-76; *Ruehman*, 34 F.3d at 529. Sheriff Sheahan does not contend that Illinois has any policy regarding, or exercises any control over, his training or supervision of deputies in the use of force when executing court orders. *Cf. Ruehman*, 34 F.3d at 529; *DeGenova*, 209 F.3d at 976. Instead, the sheriff relies on an Illinois statute that requires the sheriff to obey orders of Illinois courts:

> Each sheriff shall, in person or by deputy, county corrections officer, or court security officer, attend upon all courts held in his or her county when in session, and obey the lawful orders and directions of the court, and shall maintain the security of the courthouse.

55 Ill. Comp. Stat. 5/3-6023.

We are unable to conclude from this provision that the county sheriff operates as a state officer with respect to the conduct alleged here. Aside from the explicit command that sheriffs obey orders of Illinois courts, Illinois law assigns the responsibility for courtroom security generally to the

county sheriff. *Id.* The sheriff has no discretion in whether to obey a judge's orders, but we are aware of no state policy directing the sheriff's actions regarding the training and supervision of deputies in the use of force in carrying out state court orders. The evidence may show otherwise, but at this stage of the proceedings, we cannot conclude as a matter of law that the alleged unconstitutional policy represents state policy. Therefore, we affirm the district court's denial of Sheriff Sheahan's motion to dismiss.[6]

C. Sovereign Immunity—State Law Claims Against the Deputies

The deputies moved to dismiss the state wrongful death and survival claims, asserting that they were entitled to sovereign immunity under the Illinois State Lawsuit Immunity Act, 745 Ill. Comp. Stat. 5/1, and Court of Claims Act, 705 Ill. Comp. Stat. 505/8. The district court denied the deputies' motion, holding that the lawsuit was not a suit against the state for purposes of Illinois sovereign immunity. On appeal, the deputies argue that the district court's decision was wrong as a matter of Illinois law. We agree.

The Illinois State Lawsuit Immunity Act, 745 Ill. Comp. Stat. 5/1, provides that the State of Illinois is immune from

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[6] Sheriff Sheahan's claim to absolute immunity is without merit because the suit is against him in his official capacity. *See Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 166 (1993). Also without merit is his claim that he cannot be liable if the deputies are immune. The sheriff relies on *Tesch v. County of Green Lake*, 157 F.3d 465, 477 (7th Cir. 1998), which held that without an underlying constitutional violation, there can be no liability on a failure to train theory. *Id.* However, if there is a constitutional violation (a question we do not address here), an officer's immunity from damages does not negate the existence of that violation.

suit in any court, except as provided in the Illinois Court of Claims Act, 705 Ill. Comp. Stat. 505/8 (and other statutes not relevant here), which vests jurisdiction over state tort claims against the state in the Illinois Court of Claims. These state immunity rules apply to Richman's state law claims in federal court. *Benning v. Bd. of Regents*, 928 F.2d 775, 778-79 (7th Cir. 1991); *Magdziak v. Byrd*, 96 F.3d 1045, 1048 (7th Cir. 1996).

Under Illinois law, a claim against individual officers will be considered a claim against the state, even when, as here, the officials are sued in their individual capacities, if "judgment for the plaintiff could operate to control the actions of the State or subject it to liability." *Currie v. Lao*, 592 N.E.2d 977, 980 (Ill. 1992); *Feldman v. Ho*, 171 F.3d 494, 498 (7th Cir. 1999). If the state law claim is deemed to be against the state, then it must be dismissed. This is because, under Illinois law, the deputies would have absolute immunity, and under the Eleventh Amendment, the claim for damages against the state may not be brought in federal court. *Feldman*, 171 F.3d at 498. Either way, the collateral order doctrine provides the basis for appellate jurisdiction under the principles of *Mitchell*, 472 U.S. at 525-30, and *Metcalf & Eddy*, 506 U.S. at 145-46. *See Griesel v. Hamlin*, 963 F.2d 338, 340-41 (11th Cir. 1992) (per curiam) (holding that denial of officer's immunity under state law is an immediately appealable collateral order); *Napolitano v. Flynn*, 949 F.2d 617, 621 (2d Cir. 1991) (same).

Deputy sheriffs executing orders of the court may be agents of the state for purposes of Illinois sovereign immunity. *Alencastro v. Sheahan*, 698 N.E.2d 1095, 1101 (Ill. App. Ct. 1998). An agent's conduct will be attributed to the state for purposes of sovereign immunity if: " '(1) [there are] no allegations that an agent or employee of the State acted beyond the scope of his authority through wrongful acts; (2) the duty alleged to have been breached was not owed to the public generally independent of the fact of State employ-

ment; and (3) . . . the complained-of actions involve matters ordinarily within that employee's normal and official functions of the State.'" *Healy v. Vaupel*, 549 N.E.2d 1240, 1247 (Ill. 1990) (quoting *Robb v. Sutton*, 498 N.E.2d 267, 272 (Ill. App. Ct. 1986)); *Benning*, 928 F.2d at 779. "Sovereign immunity affords no protection, however, when it is alleged that the State's agent acted in violation of statutory or constitutional law or in excess of his authority." *See Nichol v. Stass*, 735 N.E.2d 582, 586 (Ill. 2000); *Healy*, 549 N.E.2d at 1247; *see also Feldman*, 171 F.3d at 498 ("Illinois follows the federal practice by making an exception for situations in which the public employee did not act within the scope of his employment or violated the Constitution.").

Applying these principles, we conclude that Illinois would consider the wrongful death and survival claims against the deputies to be against the state. Richman's state wrongful death and survival claims are not dependant on the alleged constitutional violation, but instead on a theory of wilful and wanton negligence, so the exception to immunity for unconstitutional conduct does not apply. *Cf. Medina v. City of Chicago*, 606 N.E.2d 490, 498 (Ill. App. Ct. 1992) (holding that there was no inconsistency between jury's verdict for plaintiff on wrongful death claim and for defendant on § 1983 claim of excessive force: "Two different standards are involved."); *Leavitt v. Farwell Tower Ltd. P'ship*, 625 N.E.2d 48, 52 (Ill. App. Ct. 1993) (wrongful death claim requires a breach of a duty, owed to the decedent, which proximately caused decedent's death, and pecuniary damages). Furthermore, Richman does not allege that the deputies' conduct was not within their normal duties, and the duty owed to Jack Richman was owed by virtue of the deputies' obligation to enforce the state court's order. The critical question, then, for determining the deputies' entitlement to sovereign immunity is whether the deputies acted beyond the scope of their authority. *See Healy*, 549 N.E.2d at 1247; *Benning*, 928 F.2d at 780-81.

As we noted earlier in this opinion (for purposes of determining the deputies' entitlement to quasi-judicial immunity), Richman does not allege that the deputies' conduct was specifically authorized by the Illinois judge. However, for purposes of determining whether an agent's acts are within the scope of his authority, the fact that the agent's act was not specifically authorized is not dispositive, so long as it is of the general kind he is authorized to perform, and is motivated, at least in part, by a purpose to serve the principal.[7] *See Janes v. Albergo*, 626 N.E.2d 1127, 1132-33 (Ill. App. Ct. 1993); *Gaffney v. City of Chicago*, 706 N.E.2d 914, 919-20 (Ill. App. Ct. 1998); *Mitchell v. Norman James Constr. Co.*, 684 N.E.2d 872, 878 (Ill. App. Ct. 1997); *Sunseri v. Puccia*, 422 N.E.2d 925, 930 (Ill. App. Ct. 1981). Similarly, if there are no allegations that the defendant was acting for a purpose unrelated to his employment, the fact that the conduct was wilful and wanton does not take the conduct outside the defendant's scope of agency for purposes of sovereign immunity. *See Janes*, 626 N.E.2d at 1132; *Rembis v. Bd. of Trustees*, 618 N.E.2d 797, 799-800 (Ill. App. Ct. 1993); *Campbell v. White*, 566 N.E.2d 47, 53-54 (Ill. App. Ct. 1991). Richman alleges that the deputies' conduct was wilful and wanton, but there is nothing in the complaint that would indicate that the deputies' conduct was motivated by a purpose other than executing the judge's order. We therefore conclude that the deputies' actions were within the scope of their authority for purposes of Illinois sovereign immunity.

Because we conclude that the deputies' acts are attributable to the state for purposes of sovereign immunity under the Illinois State Lawsuit Immunity Act and Court

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[7] On this question we are guided by Illinois law of sovereign immunity, which involves different considerations than the principles underlying the extension of quasi-judicial immunity to law enforcement officers on a § 1983 claim.

of Claims Act, we reverse the district court's decision denying the deputies' motion to dismiss the state law claims.

III. CONCLUSION

We agree with the district court that the deputies are not entitled to absolute immunity, and therefore AFFIRM that portion of the district court's order denying the deputies' motion to dismiss Richman's § 1983 claims. Because we cannot conclude as a matter of law that the alleged unconstitutional policy at issue here was state policy for purposes of the Eleventh Amendment, we AFFIRM that portion of the district court's order denying the sheriff's motion to dismiss Richman's § 1983 claims. Finally, we conclude that the deputies' conduct would be attributed to the state for purposes of sovereign immunity under the Illinois State Lawsuit Immunity Act and Court of Claims Act, and therefore REVERSE that portion of the district court's order denying the deputies' motion to dismiss the state law claims.

BAUER, *Circuit Judge*, dissenting. I respectfully dissent. The majority finds *Martin v. Board of County Commissioners*, 909 F.2d 402 (10th Cir. 1990) "more persuasive" than *Martin v. Hendren*, 127 F.3d 720 (8th Cir. 1997). The tenth circuit case involved police conduct in serving a bench warrant; the eighth circuit case is virtually on all fours with the instant case.

I have no quarrel with the result reached by the tenth circuit case; it differs not at all from the run-of-the-mill arrests made pursuant to any judicial warrant and, since the arrest takes place away from the courtroom and away

from the watchful eye of the judicial officer who issued the warrant, the conduct of the police is more likely to require a closer scrutiny. Nor is the immediate service of the warrant necessary to provide the court with the proper decorum needed to continue the work of the court.

The *Martin v. Hendren* case, like ours, however involves police officers under the immediate direction and supervision of a judge, following the judge's orders to restore or maintain order in the court instanter, doing precisely what they are sworn to do. Indeed, it is to do this job of maintaining order at the bidding of the judge that is the very reason they are present in the courtroom.

In formulating the finding granting these officers quasi-immunity, it is difficult to improve on the language of the majority opinion of the eighth circuit:

> [2-4] "Absolute quasi-judicial immunity derives from absolute judicial immunity." *Roland v. Phillips,* 19 F.3d 552, 555 (11th Cir. 1994). Judges are absolutely immune from suit for money damages when they act in their judicial capacity, unless their actions are "taken in the complete absence of all jurisdiction." *Duty* [*v. City of Springdale, Ark.*, 42 F.3d 460 (8th Cir. 1994)]. A judge's absolute immunity extends to public officials for "'acts they are specifically required to do under court order or at a judge's direction.'" *Robinson v. Freeze*, 15 F.3d 107, 109 (8th Cir. 1994) (quoting *Rogers v. Bruntrager*, 841 F.2d 853, 856 (8th Cir. 1988)). Like other officials, bailiffs enjoy absolute quasi-judicial immunity for actions "specifically ordered by the trial judge and related to the judicial function." *Id.* In subduing Martin, Hendren was acting as a de facto bailiff, obeying specific judicial commands to restore order in the courtroom. Those orders unquestionably related to the judicial function. *See Mireles v.*

Waco, 502 U.S. 9, 12-13, 112 S.Ct. 286, 288-89, 116 L.Ed.2d 9 (1991) (per curiam); *Terry v. State*, 303 Ark. 270, 796 S.W.2d 332, 335 (1990). Hendren is thus entitled to absolute quasi-judicial immunity from § 1983 liability for carrying out the judge's orders to handcuff Martin and remove her from the courtroom.

Martin argues that even if Hendren is absolutely immune from liability for implementing the judge's orders, Hendren ceased to act in a quasi-judicial capacity when he carried out those orders using excessive force. *See Martin v. Board of County Comm'rs*, 909 F.2d 402, 404-05 (10th Cir. 1990) (per curiam) (holding officers not absolutely immune for using excessive force in executing arrest warrant). After *Martin* was decided, however, the Supreme Court held a judge's order to use excessive force, issued in the judge's judicial capacity, was a judicial act for which the judge retained absolute immunity. *See Mireles*, 502 U.S. at 12-13, 112 S.Ct. at 288-89. The Court emphasized that the nature of the function being performed, not the particular act itself, controls the judicial immunity inquiry. *See id.* The Court rejected the idea that the impropriety of a judge's act strips the judge of immunity, reasoning that "[i]f judicial immunity means anything, it means that a judge 'will not be deprived of immunity because the action he took was in error . . . or was in excess of his authority.'" *Id.* (quoting *Stump v. Sparkman*, 435 U.S. 349, 356, 98 S.Ct. 1099, 1105, 55 L.Ed.2d 331 (1978) (ellipsis in *Mireles*)). Although the *Mireles* Court did not address quasi-judicial immunity, we find the Court's reasoning persuasive in this context. Absolute quasi-judicial immunity would afford only illusory protection if it were lost the moment an officer acted improperly.

> Further, the officers in *Martin* were executing an arrest warrant away from the issuing judge's courtroom, *see Martin*, 909 F.2d at 403-04, but Hendren was carrying out a judicial command in the judge's courtroom and presence. Because judges frequently encounter disruptive individuals in their courtrooms, exposing bailiffs and other court security officers to potential liability for acting on a judge's courtroom orders could breed a dangerous, even fatal, hesitation. "For the criminal justice system to function, . . . courts must be able to assume their orders will be enforced." *Patterson v. Von Riesen*, 999 F.2d 1235, 1241 (8th Cir. 1993).

Martin v. Hendren, 127 F.3d 720, at 721-22.

As to the horrific scenario envisioned by Judge Lay's dissent, the court dryly (and properly!) responded ". . . we need not speculate about hypothetical situations testing the limits of our holding."

A decision reversing the trial court in the instant case is, in my opinion, both logical and necessary, if courtroom decorum is to be preserved at all. To suggest that the judge is absolutely immune from liability for requiring the bailiffs to take a person into custody for refusing the court's direction while exposing the bailiffs to liability has implications that go beyond the present case. A probable response (if it could be done without the bailiff being held in contempt) would be to suggest that the judge, cloaked with his or her immunity, step down and preserve order himself.

I continue to have sufficient faith in the judges who serve our courts to believe that they will oversee the bailiff or bailiffs who carry out their orders in the courtroom and make sure, by direction or otherwise, that the orders are properly carried out with the reasonable amount of force that the individual cases require.

I would reverse the district court and hold the bailiffs to be cloaked with immunity when carrying out the orders of the court relating to the conduct of court proceedings themselves. It follows then, that I would reverse the order denying the sheriff's motion to dismiss. I would join the majority in reversing the order denying the deputies' motion to dismiss the state law claims.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

[Dated March 31, 2000]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARCELLA RICHMAN, individually and as Special Administrator of the Estate of Jack B. Richman, deceased,	)	
Plaintiffs,	)	
v.	)	No. 98 C 7350
	)	Judge Joan B. Gottschall
MICHAEL SHEAHAN, IN HIS OFFICIAL CAPACITY AS SHERIFF OF COOK COUNTY, THE COUNTY OF COOK, THE DEPARTMENT OF THE COOK COUNTY SHERIFF, BRIAN BURGESON, JOHN DORNER, BRIAN FOSTER, MARTY GANTMAN, RAYMOND GREVE, KELLY JACKSON, RICHARD KIM, LAURA LOKEN, MOIRA WEYRICH (n/k/a MOIRA LOWRY), JOSE MENDEZ, TIMOTHY MCPHILLIPS, EDWARD PICKELL, EDWARD PLUCINSKI, MAURICE SMITH, JEFFREY SULKIN, GEORGE VELISARIS, MIKE WISH AND MICHELLE ZIMMERMAN, INDIVIDUALLY,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Plaintiff Marcella Richman, individually and as administrator of the estate of her deceased son, Jack Richman, has brought suit against Michael Sheahan in his official capacity as Cook County Sheriff, Cook County,

the Department of the Cook County Sheriff,[1] and, in their individual capacities, eighteen sheriff's deputies. The suit arises from the courtroom death of Richman's son while he was being restrained by sheriff's deputies during a state court proceeding. In Counts I and III, Richman alleges that the sheriff's deputies violated her and her son's rights to be secure in their persons against unreasonable searches and seizures, their due process rights, and § 1983. In Counts II and IV, Richman alleges that the Cook County Sheriff, Cook County, and the Department of the Cook County Sheriff, as policy makers, failed to instruct, supervise, control and discipline the sheriff's deputies to refrain from using excessive force. In Counts V and VI, the Plaintiff alleges that all defendants are liable for compensatory and punitive damages pursuant to Illinois' Wrongful Death Act, 740 ILCS 180/1, and Survival Act 755 ILCS 5/27-6. Defendants have moved to dismiss all of Richman's claims.

Background

The court, as it must, accepts as true the facts alleged in the plaintiff's complaint. *Flynn v. Kornwolf*, 83 F.3d 924, 925 (7th Cir.), *cert. denied*, 519 U.S. 930 (1996). On or about November 18, 1997, Richman appeared in the Cook County Circuit Court before Judge Michael Jordan to challenge the issuance of a traffic citation issued against her. Her son accompanied her to testify on her behalf. Richman's case was placed at the end of the court call. After waiting in the courtroom for several hours, the case was called for hearing and immediately contin-

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[1] The court previously dismissed the Department of the Cook County Sheriff. (*See* 7/7/99 Min. Order)

ued to a future date by Judge Jordan. At the time Judge Jordan continued the case, Richman and her son attempted to ask him a question regarding it, but Judge Jordan quieted them. Immediately thereafter, her son spoke to Judge Jordan, who placed him in restraint.

After two sheriff's deputies began to restrain Richman's son, twelve more deputies entered the courtroom and joined them. Together, the fourteen deputies attacked her son, forced him to the floor, face down, and attempted to handcuff him. Richman's son, a physically disabled person who required the aid of a cane, was unable to, and did not, resist the attack. During the attack, he gasped for air and complained of pain and an inability to breathe. The deputies continued to physically restrain him, sat on him, and pulled his arms behind his back to secure him in the handcuffs. Sometime after handcuffing him, but while he remained on his stomach on the floor, one or more of the deputies noticed that her son's face and lips were blue, that he appeared not to be breathing, and that he had urinated and defecated upon himself. Subsequently, emergency assistance was called, and several paramedics entered the courtroom, administered CPR, and took him to the hospital, where he was pronounced dead.

While the fourteen deputies were restraining her son, four other deputies restrained Richman and forced her to leave the courtroom. Richman is an elderly woman who required the aid of a cane and was unable to and did not resist the attack.

Analysis

When considering a motion to dismiss, the court must examine the sufficiency of the complaint, not the merits

of the lawsuit. *Trial Assoc., Inc. v. Chicago House. Auth.*, 892 F.2d 583, 586 (7th Cir. 1989). The court must draw all inferences and resolve all ambiguities in the plaintiff's favor and assume that all well-pleaded facts are true. *Dimmig v. Wahl*, 983 F.2d 86, 87 (7th Cir. 1993). A motion to dismiss will be granted only if the court finds that the plaintiff can prove no set of facts to support her allegations. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

Cook County as Proper Defendant

The Illinois Supreme Court has held that the Cook County Sheriff "is a county officer and, as such, is not in an employment relationship with the County of Cook." *Moy v. County of Cook*, 640 N.E.2d 926, 931 (Ill. 1994). Accordingly, "the county may not be held vicariously liable for the sheriff's alleged negligent conduct." *Id.* Richman has offered no reason why the county-sheriff relationship is subject to a different analysis under the facts alleged in this case, nor has she offered an alternative basis for holding the county liable. Defendants' motion to dismiss Cook County is granted.[2]

Quasi-Judicial Absolute Immunity

Defendants argue that they are entitled to quasi-judicial absolute immunity because, in trying to restrain and remove Richman's son from the courtroom, they were

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[2] In her response brief, Richman argues that the Cook County Sheriff's Office is a proper defendant. This issue is not before the court, as it was not raised in defendants' motion to dismiss, and the Cook County Sheriff's Office is not named as a defendant in Richman's Amended Complaint.

acting pursuant to Judge Jordan's command. The Seventh Circuit has recognized that "[n]on-judicial officers whose official duties have an integral relationship with the judicial process are entitled to absolute immunity for their quasi-judicial conduct." *Henry v. Farmer City State Bank*, 808 F.2d 1228, 1238 (7th Cir. 1986) (citing *Ashbrook v. Hoffman*, 617 F.2d 474, 476 (7th Cir. 1980)). Accordingly, "police officers, sheriffs, and other court officers who act in reliance on a facially valid court order are entitled to quasi-judicial immunity from suit under § 1983 for damages." *Id.* at 1239.

The court rejects Richman's argument that the deputies' restraint of an individual who had been held in contempt by the court and ordered removed from the courtroom was not a quasi-judicial function. The officers' conduct took place in the courtroom, was at the judge's express direction, and was integrally connected to the courtroom proceedings.

However, the fact that the sheriff's deputies acted pursuant to a court order does not give rise to blanket immunity under all circumstances. As the Tenth Circuit has recognized, "absolute immunity does not protect defendants from damages claims directed not to the conduct prescribed in the court order itself but to the manner of its execution." *Martin v. Board of County Comm'rs*, 909 F.2d 402, 405 (10th Cir. 1990); *see also Napier v. Jonas*, No. 1:94-CV-630, 1995 WL 454774, at *4 (W.D. Mich. Feb. 10, 1995) ("While quasi-judicial immunity protects court officers from the fact of their enforcement of a court order, it does not empower them to execute the court order with excessive force."). This common-sensical standard is grounded in the principle that "quasi-judicial immunity only extends to the conduct prescribed by the order." *Cortez v. Close*, No. 99 C

2397, 2000 WL 204232, at *3 (N.D. Ill. Feb. 10, 2000) (citing *Valdez v. Denver*, 878 F.2d 1285, 1286 (10th Cir. 1989)). The doctrine "does not immunize a sheriff's deputies for actions taken beyond those ordered by the court or authorized by the court order." *Id.* (citing *Rucinski v. United States*, 94 C 6619, 1995 WL 103 744, at *3 (N.D. Ill. Mar. 6, 1995)).

The court does not disagree with the Eighth Circuit's holding in *Martin v. Hendren*, 127 F.3d 720 (8th Cir. 1997), that bailiffs and court-assigned deputies enjoy quasi-judicial immunity for actions specifically ordered by the trial judge and related to the judicial function. *Id.* at 721. However, the court disagrees with the Eighth Circuit's broad application of the Supreme Court's holding in *Mireles v. Waco*, 502 U.S. 9 (1991) to the conduct of non-judicial officers. The Eighth Circuit reasoned that if, as the *Mireles* Court held, a judge is absolutely immune from damages for ordering courtroom deputies to use excessive force, then deputies who use excessive force in carrying out a judicial order should also be absolutely immune—even if the order did not call for the use of excessive force—simply because of their close relationship to the judicial function. *See Martin v. Hendren*, 127 F.3d at 721-22 (citing *Mireles*, 502 U.S. at 12-13).

The distinction the Eighth Circuit draws between its approach in *Martin v. Hendren* and the Tenth Circuit's approach in *Martin v. Board of County Comm'rs*—*i.e.*, that *Martin v. Hendren* involved an unruly individual in the courtroom whereas *Martin v. Board of County Comm'rs* involved the execution of a judicial order outside the courtroom—does not strike this court as a basis for applying a different legal standard. Under the Eighth Circuit's reasoning, if a judge told deputies to subdue a

loud-mouthed litigant in her courtroom, a deputy who did so with lethal force would be absolutely immune. For this reason, the court believes that the Tenth Circuit rule is the better one.

Thus, to escape the preclusive effect of quasi-judicial immunity, Richman must allege that the deputies' conduct exceeded what was reasonably necessary to effectuate the court's order. By alleging that the deputies' "seizure of Decedent was excessive both in terms of sheer number of deputy sheriffs and force used" (Am. Compl. § 24), she has done so. Under our system of notice pleading, Richman's allegations are sufficient to defeat quasi-judicial immunity as to the fourteen sheriff's deputies who restrained her son.[3]

Because Richman's complaint does not allege that the four deputies who restrained and removed her did so pursuant to an order from the judge, they are not entitled to quasi-judicial immunity. Further, Richman's allegations against the Cook County Sheriff are based on his failure to train and supervise, not on acts performed pursuant to a court order. Accordingly, he is not entitled to quasi-judicial immunity.

Qualified Immunity

Defendants seek dismissal of the claims against the sheriff's deputies who seized Richman on the ground

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[3] The court notes that where, as here, a judge orders courtroom deputies to subdue a person, and the deputies proceed to carry out the order in the judge's presence, it will predictably be very difficult for a plaintiff to prove that the deputies were doing more than simply carrying out the judge's order.

that they are entitled to qualified immunity. "Police officers who use force in making an arrest are entitled to qualified immunity from suits for damages under 42 U.S.C. § 1983 insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Smith v. Darlin*, No. 97 C 0763, 1999 WL 498586, at *3 (N.D. Ill. Jul. 8, 1999) (quoting *Rice v. Burks*, 999 F.2d 1172, 1174 (7th Cir. 1993)). The court's inquiry is "concerned not with the state of mind or good faith of the government actor, but with the 'objective legal reasonableness' of his actions—in other words, with whether a reasonable police officer could have believed that [the officer's] conduct was constitutional 'in light of clearly established law and the information [he] possessed' at the time." *Frazell v. Flanigan*, 102 F.3d 877, 886 (7th Cir. 1996) (quoting *Anderson v. Creighton*, 483 U.S. 635, 639, 641 (1987)).

Richman alleges that the four deputies used excessive force in seizing and removing her from the courtroom. In analyzing claims that an officer used excessive force, the objective reasonableness standard "requires the court to balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Id.* at 882 (internal quotation marks omitted). A plaintiff may overcome a qualified immunity defense in one of two ways: (1) by pointing to a closely analogous case establishing in a sufficiently particularized sense the right at issue; or (2) by showing that the force used was so plainly excessive under the circumstances that a reasonable officer would have known of the constitutional violation. *See Darlin*, 1999 WL 498586, at *3-*5.

The court is not able to make this fact-intensive determination without a more developed factual record. The complaint does not allege that the judge ordered Richman's restraint and removal, nor is there any indication that the deputies' removal of her was justified. Accordingly, the court cannot determine the objective reasonableness of the deputies' use of force. Defendants may raise the qualified immunity issue on summary judgment, but to the extent they seek dismissal on that basis now, their motion is denied.

Eleventh Amendment Immunity

The Defendants maintain that the Eleventh Amendment bars Richman's § 1983 official capacity claim against the Cook County Sheriff.[4] The Eleventh Amendment bars all suits against a state or its agencies unless the state consents to suit in federal court or Congress uses its Fourteenth Amendment powers to abrogate the state's immunity. *Scott v. O'Grady*, 975 F.2d 366, 369 (7th Cir. 1992), *cert. denied*, 508 U.S. 942 (1993). A suit against a state official in her official capacity is deemed to be a suit against the state and thus is barred under the Eleventh Amendment. *Id.*

The court must determine whether Richman's allegations against the Cook County Sheriff are based on acts performed by the Sheriff as an agent of the State of Illinois. *See id.* at 370 (holding that if the sheriff and his deputy "were acting as agents of the State of Illinois when they forcibly evicted the Scotts, this lawsuit is a

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[4] The court does not address defendants' arguments as they apply to Cook County or the Cook County Sheriff's Department given its dismissal of those entities.

damage action against Illinois and is barred by the Eleventh Amendment"). If they are based on acts performed by the Sheriff as a county officer, the Eleventh Amendment is no bar to the claims. *See id.* at 371 ("[W]hen a county sheriff in Illinois performs his duties as the principal executive officer or chief law enforcement officer of the county, he acts as a county official and does not get the benefit of the Eleventh Amendment.").

Richman's claims against the Sheriff in his official capacity are based not on any direct role he played in carrying out the state court's order, but on his failure to train and supervise the deputies to refrain from using excessive force in their seizures of citizens. This alleged failure is not limited to deputies' conduct in effectuating state court orders. In that regard, this case is distinguishable from *Scott*, in which it was alleged that the Sheriff's policy and practice of carrying out state courts' Writs of Assistance were unlawful. *See id.* at 368-69. Because Richman's claims against the Cook County Sheriff are not based on his conduct as a state agent, the Eleventh Amendment does not bar the claims.

Court of Claims Jurisdiction

Defendants argue that the Illinois Court of Claims has exclusive jurisdiction over Richman's state law claims. It is well-settled that the State of Illinois may not be sued except as provided in the Court of Claims Act. *See Benning v. Board of Regents of Regency Universities*, No. 89 C 20072, 1990 WL 32305, at *3 (N.D. Ill. Feb. 12, 1990) (citing *Robb v. Sutton*, 498 N.E.2d 267, 270 (Ill. App. Ct. 1986)), *aff'd*, 928 F.2d 775 (7th Cir. 1991). "[T]he determination of whether or not an action is a suit against the state is dependent upon an analysis of

two factors—the issues involved and the relief sought—rather than a formal identification of the parties." *Id.* (quoting *Robb*, 498 N.E.2d at 270).

For the same reasons set forth in the court's analysis of defendants' Eleventh Amendment argument, the court finds that the Cook County Sheriff is not being sued as a state agent, but as an independent county official. Accordingly, the Court of Claims Act does not deprive this court of jurisdiction to hear the state law claims against him.

Where defendants are named in their individual capacities, as the sheriff's deputies have been here, the issue "is whether the suit is actually against the individuals or is against the individuals in name alone and really a claim against the state." *Id.* Even assuming that the sheriff's deputies were acting as state agents in carrying out the court's order, "[a] suit may be maintained against a state agent in an individual capacity if that agent acts illegally or outside the scope of permitted authority." *Id.* (citing *Robb*, 498 N.E.2d at 270). Because the complaint alleges that the sheriff's deputies acted illegally or outside the scope of their authority in their seizures of Richman and her son, the Court of Claims Act does not deprive this court of jurisdiction.

Immunity From State Law Claims Under Tort Immunity Act and Sheriff's Act

Defendants rely on three provisions[5] from Illinois' Tort Immunity Act and one from the Sheriff's Act in arguing

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[5] Defendants raise a fourth provision—745 ILCS 10/3-108—in their reply brief. The court will not address grounds for dismissal that are raised for the first time in reply.

that defendants are immune from Richman's state law claims. The first provision, 745 ILCS 10/2-204, provides that "[e]xcept as otherwise provided by statute, a public employee, as such and acting within the scope of his employment, is not liable for an injury caused by the act or omission of another person." At this stage of the case, the court cannot determine whether this will bar liability of any of the defendants. The complaint alleges that all of the sued public employees injured Richman and her son by committing wrongdoing in their own right. If the evidence indicates that certain employees' liability can only be based on the acts or omissions of others, this basis for immunity should be raised at the summary judgment stage.

The second provision relied on, 745 ILCS 10/2-201, provides that "[e]xcept as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused." While the court has found for purposes of resolving this motion that the conduct alleged in the complaint was discretionary as to all defendants,[6] Richman nevertheless argues that this im-

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[6] Conversely, if the court were to find that the deputies' restraint of Richman or her son was ministerial, the state law claims against them would still fail because those deputies would be dismissed based on their entitlement to quasi-judicial immunity. *See Henry*, 808 F.2d at 1238 ("Although immunity is normally extended to those performing discretionary and not ministerial acts, 'those performing ministerial acts under a judge's supervision and intimately related to judicial pro-

(continued...)

munity does not apply because the scope of immunity in § 2-201 is limited by § 2-202 of the same Act, which provides that "[a] public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct." 745 ILCS 10/2-202.

The Illinois Supreme Court has rejected Richman's interpretation of the interplay between §§ 2-201 and 2-202, holding that:

> The plain language of section 2-201 is unambiguous. That provision does not contain an immunity exception for willful and wanton misconduct. Where the legislature has chosen to limit an immunity to cover only negligence, it has unambiguously done so. Since the legislature omitted such a limitation from the plain language of section 2-201, then the legislature must have intended to immunize liability for both negligence and willful and wanton misconduct. . . . Cases holding to the contrary . . . are overruled on this point.

In re Chicago Flood Litigation, 680 N.E.2d 265, 273 (Ill. 1997) (citations omitted).

Contrary to defendants' suggestion, however, this does not end the inquiry. Richman's allegations against the deputies who seized her son are not limited to negligent or willful and wanton conduct. She also alleges that those deputies acted maliciously. (*See* Am. Compl. 120)

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[6] (...continued)
ceedings have quasi-judicial immunity.'") (quoting *Ashbrook*, 617 F.2d at 477 n.4).

The *Chicago Flood* court did not "address the issue of whether corrupt, malicious or bad faith conduct by public officials is immunized by section 2-201." *Amati v. City of Woodstock*, Nos. 92 C 20347, 94 C 50235, 1997 WL 587493, at *5 (N.D. Ill. Aug. 7, 1997), *aff'd*, 176 F.3d 952 (7th Cir.), *cert. denied*, 120 S. Ct. 445 (1999). In light of previous state appellate court decisions holding that § 2-201 does not apply to such conduct, Richman's allegations, if proven, are sufficient to avoid the immunity granted by § 2-201. *See id.*

Richman does not allege that the deputies who seized her acted maliciously or in bad faith, nor that the Sheriff acted maliciously or in bad faith by failing to train the deputies. Her reliance on the "special duty doctrine" to escape immunity is unavailing, as the Illinois Supreme Court has held that the doctrine cannot override governmental immunities created by the Tort Immunity Act. *See Payne v. Churchich*, 161 F.3d 1030, 1044 n. 18 (7th Cir. 1998) (citing *Zimmerman v. Village of Skokie*, 697 N.E.2d 699,710 (Ill.1998)), *cert. denied*, 119 S. Ct. 2339 (1999). Accordingly, as currently alleged, the state law claims against the deputies who seized Richman and the Cook County Sheriff are barred by § 2-201.[7]

The final provision of the Tort Immunity Act on which defendants rely is 745 ILCS 10/2- 208, which states that "[a] public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, unless he acts maliciously and without probable cause." Defen-

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[7] Of course, § 2-201 does not operate as a bar to the § 1983 claims against these defendants. Immunity in that context is a matter of federal law. *See Payne*, 161 F.3d at 1038.

dants argue that the deputies were acting with probable cause pursuant to a valid judicial proceeding—i.e., the contempt action instituted by Judge Jordan against Richman's son.

By its terms, § 2-208 does not apply to the failure to train allegations against the Sheriff, nor to the claims against the deputies who seized Richman, given that there is no indication that the court ordered her seizure. Further, even assuming that the deputies' seizure of Richman's son falls within the scope of § 2-208, the court cannot determine at this stage that defendants acted without malice or with probable cause. This determination will depend, in significant part, on whether the deputies' conduct went beyond the scope of the court's order. Defendants may again raise § 2-208 once the factual record has been developed.

Contrary to defendants' insistence, the Sheriff's Act, 55 ILCS 5/5-1002, does not immunize the Cook County Sheriff from the state law claims brought against him. The provision cited by defendants addresses the circumstances under which a county is required to indemnify a sheriff or deputy for liability stemming from injuries caused by the sheriff or deputy in the performance of their duties. It does not bear on immunity. The case cited by defendants as support, *Chaney v. City of Chicago*, 901 F. Supp. 266 (N.D. Ill. 1995), is inapplicable. In that case, the plaintiff had sued the sheriff under 55 ILCS 5/3-6016, which provides that the sheriff "shall be liable for any neglect or omission of a duty of his or her office when occasioned by a deputy or auxiliary deputy, in the same manner as if his or her own personal neglect or omission." *See id.* at 268. The *Chaney* court held that the provision "only applies to the extent a complaint alleges that a deputy was negligent; it does not impose

liability on the sheriff for a deputy's intentional or wanton misconduct." *Id.*

In this case, Richman does not seek to impose liability against the Cook County Sheriff based on his deputies' negligence, but on the Sheriff's own failure to train and supervise. The statutory provision on which the *Chaney* court's holding is based has not even been invoked by Richman, and has no bearing on the immunity issues raised in this case.

Policy or Custom Requirement Under § 1983

Richman alleges that the sheriff's deputies acted pursuant to an official policy or custom of the Cook County Sheriff when they used excessive force against her and her son. Specifically, the complaint alleges that the policy or custom consists of the Sheriff's failure to train and supervise the deputies to refrain from using excessive force in restraining citizens. In *City of Canton, Ohio v. Harris*, 489 U.S. 378, 388 (1989), the Supreme Court held that a failure to train can rise to the level of a policy or custom for purposes of a local government's § 1983 liability "where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact."

The Supreme Court has rejected attempts to impose a heightened pleading standard for § 1983 claims. *See Leatherman v. Tarrant County Narcotics Intell. and Coord. Unit*, 507 U.S. 163, 168 (1993). Thus, plaintiffs are not required to plead with particularity the facts upon which their failure to train claim is based, but need only provide a "short and plain statement of the claim that will give the defendant fair notice of what the plain-

tiff's claim is and the grounds upon which it rests." *Id.* (citing *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

By alleging that their § 1983 claims against the Sheriff are based on his failure to train and supervise deputies to refrain from using excess force in seizures, Richman has given the Sheriff adequate notice of the nature of the claims against him. Defendants' motion to dismiss Counts II and IV is denied.

Punitive Damages

Defendants argue that Richman's requests for punitive damages in her state law claims should be stricken. In her response, Richman asserts that she "does not seek punitive damages against any governmental entity, but rather, against the individual deputy sheriffs for their willful, wanton and vicious attack upon the decedent pursuant to Illinois' Wrongful Death Act, 740 ILCS 180/1 et seq., and the Survival Act, 755 ILCS 5/27-6." (Resp. at 33) Neither statute allows Richman to recover punitive damages. *See Burgess v. Clairol, Inc.*, 776 F. Supp. 1278, 1280 (N.D. Ill. 1991) ("[I]t is well-settled that the Illinois Wrongful Death Act does not allow for the decedent's surviving spouse and next of kin to recover punitive damages.")[8]; *Ballweg v. City of Springfield*, 499 N.E.2d 1373, 1377 (Ill. 1986) ("Illinois law is clear that punitive damages are not recoverable under the Survival Act.").

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[8] The fact that Richman brings her claims in her own behalf and as the administrator of her son's estate does not change this analysis, given that "[i]n a wrongful death action, the amount recovered shall be for the exclusive benefit of the surviving spouse and next of kin." *Bass v. Wallenstein*, 769 F.2d 1173, 1188 n.15 (7th Cir. 1985).

Accordingly, Richman's claims for punitive damages under Counts V and VI of her complaint are dismissed. Further, to the extent Richman purports to bring claims for punitive damages under § 1983 against the Cook County Sheriff in his official capacity, such claims are dismissed. *See City of Newport v. Fact Concerts*, 453 U.S. 247, 271 (1981).

Conclusion

Defendants' Motion to Dismiss is granted in part and denied in part, as set forth above. Cook County is dismissed. The state law claims against the Cook County Sheriff and the deputies who allegedly restrained and removed Richman from the courtroom—Kelly Jackson, Laura Loken, Timothy McPhillips, and Michelle Zimmerman—are dismissed based on their entitlement to immunity under 745 ILCS 10/2-201. Richman's claims for punitive damages under Counts V and VI are dismissed, as are any punitive damages claims she purports to bring under § 1983 against the Cook County Sheriff in his official capacity.

ENTER:

/s/ Joan B. Gottschall
JOAN B. GOTTSCHALL
United States District Judge

DATED: March 31, 2000